THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.12850 of 2007

Date: 21.06.2007

Between:

S.Visweswara Rao.

....Petitioner

And

The Kanakamahalakshmi Co-operative Bank Limited.

....Respondent

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.12850 of 2007

O R D E R:

The petitioner obtained a loan of Rs.20,00,000/- from the respondent-Bank. The amount is payable in five years, in equal monthly instalments. An item of immovable property belonging to the petitioner was mortgaged as a security for repayment. Alleging that the petitioner committed default, in payment of the instalments, the respondent invoked the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and issued notices under the relevant provisions. Ultimately, the property is sought to be recovered from the petitioner, vide a notice issued under Section 13(2) of the Act thereof. An order, as required under the Act, was also obtained from the Court of Chief Metropolitan Magistrate, Visakhapatnam on 09.05.2007. The said proceedings are challenged in this writ petition.

Heard Sri C.Ramachandra Raju, the learned counsel for the petitioner and Sri D.Govardhana Chary,

the learned counsel for the respondent, who took notice at the stage of admission.

The petitioner does not dispute the fact that he obtained loan of Rs.20,00,000/- from the respondent-Bank and committed default in payment of the instalments. There is some controversy as to the exact amount due. While according to the petitioner, he repaid a sum of Rs.3,65,000/-, the proceedings issued by the respondents indicate that only a sum of Rs.54,500/- was paid on two different dates. This Court cannot decide that controversy.

Learned counsel for the petitioner submits that his client is willing to clear all the isntalemtns due and would continue to pay the monthly instalments regularly. Though this Court cannot sit as an appellate authority, in the proceedings initiated under the Act, on an overall consideration of the matter, it emerges that the object underlying the Act is only to ensure repayment of the secured loans. The interests of the parties can be protected, by directing clearance of all the instalments that have become due, so far, and to bind the petitioner to pay the balance instalments.

For the foregoing reasons, the writ petition is allowed and the impugned proceedings, dated

09.05.2007, are set aside, on conditions that-

a) The respondent shall furnish the Statement of Accounts to the petitioner, within one week from today, duly taking into consideration, the material that may be placed by the petitioner, in proof of payment of any amounts, so far;

b) Within six (6) weeks from the date of receipt of the Statement of Accounts, the petitioner shall clear all the outstanding instalments, up to date, together with simple interest at the rate of 12%. The petitioner shall be under obligation to pay the future instalments, as per Schedule; and

c) In case, the petitioner fails to comply with condition (b), referred to above, or commits default in payment of instalments, for two consecutive months, the proceedings hereby set aside shall stand revived and it shall be open to the respondent to proceed with the implementation of the same.

There shall be no order as to costs.

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21.06.2007

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